

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|----------------------------------|---|--|
| UKRINTERENERGO, |) | <u>AFFIRMATION FOR JUDGMENT BY DEFAULT</u> |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | NO.: 07-CIV-8815 |
| |) | |
| ANEX INTERNATIONAL TRADING, LLC, |) | HONORABLE |
| |) | PAUL A. CROTTY |
| <i>Defendant.</i> |) | |

Ulyana Bardyn, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

1. I am a member of the Bar of this Court and am an associate with the firm of Brown Rudnick Berlack Israels LLP, attorneys for Plaintiff Ukrinterenergo (“Ukrinterenergo”) in the above-entitled action, and I am familiar with all the facts and circumstances in this action.

2. I submit this Affirmation pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of Ukrinterenergo’s application for the entry of a default judgment against Defendant Anex Trading International (“Anex”).

3. This is an action to enforce an arbitral award rendered in favor of Ukrinterenergo in an arbitration proceeding that occurred in Kyiv, Ukraine, before the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the “Arbitral Tribunal”).

4. The Arbitral Tribunal concluded that Anex had breached an agreement for sale of electric power entered between Ukrinterenergo and Anex, dated as of September 29, 2003, as amended and was liable to Ukrinterenergo (i) for the electric power supplied in the

amount of \$ 260,000.00, (ii) for interest in the amount of \$ 1,926.23, and (iii) for arbitration fees and costs in the amount of \$ 11,239.48. The total amount of the award is \$ 273,165.71.

5. Jurisdiction of the subject matter of this action is based on 9 U.S.C. §203 and 28 U.S.C. §1331. This Court has personal jurisdiction over Defendant because Defendant's principal place of business is in the State of New York. Defendant is a limited liability company organized under the laws of the State of New York and is not an infant or an incompetent.

6. This action was commenced on October 12, 2007 by the filing of the Summons and Complaint. On or about November 2, 2007, Ukrinterenergo amended its Complaint as of right and filed an Amended Complaint, which reflected the fact of Anex's payment in partial satisfaction of the Award in the amount of \$45,282.37 and modified the requested relief to the outstanding indebtedness in the amount of \$227,883.34.

7. A copy of the Summons and First Amended Complaint was served on Anex on November 30, 2007 pursuant to Section 303 of the Limited Liability Company Law by personal service on Carol Vogt, officer at the NYS Department of State, Division of Corporations, and Affidavit of Service prepared by the process server was filed.

8. Anex has not answered or otherwise responded to the First Amended Complaint and the time permitted by law for Anex to answer or otherwise respond to the First Amended Complaint has expired. A true and correct copy of the Clerk's Certificate is enclosed as Exhibit A.

9. This action seeks judgment for the amount of \$227,883.34, which has not been paid by the Defendant. Plaintiff is not seeking to collect interest on this amount or attorney fees. Statement of Damages prepared by Plaintiff is enclosed as Exhibit B.

10. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

11. Proposed Judgment is enclosed as Exhibit C.

WHEREFORE, Plaintiff requests the entry of Default and the entry of the annexed Judgment against Defendant.

Dated: New York, New York
February 14, 2008

BROWN, RUDNICK, BERLACK, ISRAELS LLP

By: Ulyana Bardyn
Ulyana Bardyn (UB-7633)

Seven Times Square
New York, New York 10036
(212) 209-4800
Attorneys for Plaintiff
Ukrinterenergo